

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2254 of 1985

For Approval and Signature:

Hon'ble MR.JUSTICE N.J.PANDYA

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1. Whether Reporters of Local Papers may be allowed  
to see the judgements? No

2. To be referred to the Reporter or not? No

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3. Whether Their Lordships wish to see the fair copy  
of the judgement? No

4. Whether this case involves a substantial question  
of law as to the interpretation of the Constitution  
of India, 1950 of any Order made thereunder? No

5. Whether it is to be circulated to the Civil Judge?  
No

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DR. VAIKUNTHBHAI M YAGNIK

Versus

DEAN,M.P.SHAH MEDICAL COLLEGE

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Appearance:

MR KB PUJARA for Petitioners

Mr.A.J.Desai, LAGP for M/S MG DOSHIT & CO for

Respondent No. 1,2,4 & 6

MR HV CHHATRAPATI for Respondent No. 3 & 5.

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CORAM : MR.JUSTICE N.J.PANDYA

Date of decision: 18/10/96

ORAL JUDGEMENT

Petitioner no.1 had entered Government Medical  
Service in Class-III post and subsequently came to be  
promoted to Class-II and as such he was working in Irwin

Group of Hospital at Jamnagar on 8-9-1975 onwards and according to his entitlement, he was allotted quarter No.D/7 in Medical College Campus at Jamnagar on and from 1-10-1975. Deduction from his salary towards the occupation of said quarter was being made according to Rules. With effect from 5-12-1980 petitioner no.1 became Resident Medical Officer of the said hospital and thus became entitled to a rent-free Government quarter. In that capacity and with that entitlement he continued to occupy the said quarter No.D/7.

2. Petitioner no.2, who is the daughter of petitioner no.1, had entered Government service since January 1980 or thereabout as Warden of Nursing Hostel, Jamnagar. She is a Class-III employee of the State of Gujarat and as such, she is entitled to a quarter in the medical campus of said Jamnagar Hospital known as E-type Quarter. However, right from the beginning that she started service with the said Hospital as she was staying with petitioner no.1, her father, there was no question of her being allotted any quarter, nor did she applied for any.

3. Petitioner no.1 retired from 30th April 1983 and about 4 months prior to his retirement, he had entered into correspondence with the competent authority for allotment of quarter to his daughter. This was being done on the basis of a Government Resolution dated 1-8-1980 as well as circular dated 6-8-1965 as also circular of 11th April 1979.

4. The effect of those circulars and G.R. was that if, son, daughter, wife or husband, father or mother, as the case may be, has been allotted a Government Accommodation on account of Government service, on the retirement of that Government servant, any of the aforesaid relations, if happens to be a Government servant, out of turn allotment of Government accommodation is to be made to that relation.

5. In the instant case, it is not in dispute that petitioner no.2 is entitled to a rent free accommodation either from Government pool or from quarters meant for Nursing staff. She is entitled to E-Type quarter, as mentioned above.

6. Applications, therefore, came to be made in or about December 1982 or January 1983 and in fact, a vacant quarter E-56 was specifically referred to for the purpose. The idea was that if the allotment is made to petitioner no.2 before the retirement date of petitioner

no.1, smooth change of accommodation can take place and bigger quarter occupied by petitioner no.1 can be made available to an eligible Officer.

7. The sad story of petitioner no.1 began from the date of those applications. Those applications were never attended to nor satisfactorily replied for. By passage of time, the date of retirement of petitioner no.1 came. The effect was that, petitioner no.1 ceased to be a Government servant and as no quarter was allotted to petitioner no.2, he continued to occupy quarter D-7 which he was doing during his active Government service.

8. Respondents no.1 & 2 respectively the Dean and Medical Superintendent took a furious stand whereby the situation that gradually developed was that by the end of 6th month of retirement of petitioner no.1, he was facing a demand of economic rent or forcible eviction under the Gujarat Public Premises (Eviction of Unauthorised Occupants) Act (for short "the said Act"), and at the same time was not getting any of his retirement dues like death-cum-retirement gratuity, last pay for the month of April 1983 and so on. Petitioner no.1 entered into correspondence with the State Government authorities particularly, the Officer of the Director of Health and Medical Services, who is respondent no.4 in the petition. The Deputy Secretary to the Government of Gujarat, Health and Family Welfare Department specifically wrote letters to the Medical Supdt. Irwin Hospital, Jamnagar in the matter but to no avail.

9. The request for allotment of quarter to petitioner no.2 was sought to be refused on the ground that she is a married daughter of the petitioner. This was clarified by the Deputy Secretary, in his letter dated 4-1-1984 page 47 and yet, the adamant attitude of the first respondent continued.

10. The net result, therefore, was that there being a clear cut position and the relevant G.Rs and circulars with regard to the relation of a Government employee being in service of the Government and therefore entitled to out of turn allotment of a Government quarter on the retirement of the Government service, the first two respondents did not act thereunder and went on insisting for payment of economic rent for quarter D-7 and in a very highhanded manner which is totally inexcusable even the last pay certificate came to be withheld.

11. An affidavit-in-reply is filed by Dr.J.S.Anand, which is sworn to on 17-1-1986 on which day, he was the

Dean of M.P.Shah Medical College, Jamnagar. In para 9 of the said affidavit, Dr.Anand does say that petitioner no.2 is entitled to rent free quarter both under general pool and in the Nurses Hostel and yet, he maintains all through out his affidavit on more than one occasion that she can be allotted if she asked for a quarter in the Nurses Hostel where petitioner no.1 will not be allowed to stay. The harp of the first two respondents obviously, is on petitioner no.1. They are out to see that he is harassed. If petitioner no.2 is entitled to a general pool quarter, there being an application for that, right from the month of January 1983, she could have easily been allotted especially when a quarter of the category to which she is entitled to, has been specifically referred to in those applications. The situation made by the first two respondents is that though the quarters are available, petitioner no.2 is denied stating that she has not asked for a quarter in the Nurses Pool and as a result, according to them and their furious thinking that petitioner no.1 has become an unauthorised occupant of the quarter where he was entitled to stay without payment of rent.

12. This situation, however, was partially rectified by said Deputy Secretary, by his letter dated 21st March 1984. But the said letter clearly says that till a quarter is allotted to petitioner no.2, petitioner no.1 is allowed to occupy and continue to occupy quarter D-7. Eventually, respondent no.1 by letter dated 19-1-1995 also issued a note dated 19-1-1985 on the same line, but insisted upon payment of economic rent.

13. Insistence upon payment of economic rent was clearly uncalled for and unjustified. Petitioner no.1 had occupied quarter D-7, because though entitled petitioner no.2 was not being allotted the quarter. Resolutions and Circulars are being issued by the Government from time to time to take care of a given situation. The persons, who are eligible to the benefits thereunder would ordinarily get the same provided those letters, G.Rs. and circulars are acted upon by the authorities that be, in letter and spirit. It is very sad to note that in the instant case petitioner no.1 had become target of harassment on the part of the first two respondents and instead of giving benefit of those letters, circulars and G.Rs. whatever other provisions that said respondents can lay their hand upon, they were making use upon it expressly for the purpose of creating as many difficulties as they could, on petitioner no.1.

14. Later on, by 22nd October 1988, the situation

developed in the manner that for the period from 1-3-1985 to 31-3-1988, petitioner no.1 was required to pay rent at the rate of Rs.106/- per month for quarter D-7 and petitioner no.2 was to be allotted quarter E-15 and this was to happen only on condition that total amount of Rs.3,922/- is paid within the aforesaid period and on condition that Quarter No.D-7 will be vacated on allotment of quarter No.E-15.

15. The latter condition is quite legitimate and in keeping with those G.Rs. and circulars about Government Employees who are retired. However, to make it conditional that petitioner no.2 will be allotted quarter only if the said rent is paid is in keeping with the total highhanded and very coercive attitude displayed by the first two respondents towards the petitioners.

16. Learned Advocate Mr.Pujara appearing for the petitioner has with him a letter received from the petitioner no.1 written on 22-10-1988. It says that petitioner no.1 has in fact paid the said rent of Rs.3922/- on 8-4-1988 and Quarter E-15 has been taken possession of etc.

17. What came to be given to petitioner no.2 in the year 1988 could well have been done in the year 1983 but for total inexplicable reason, respondents 1 & 2 did nothing of the sort. On the contrary, in the said affidavit in reply of Mr.J.S.Anand, all possible baseless defences have been taken and the situation is tried to be explained away.

18. In this background, it is obvious that this adamant attitude bordering on intransigent on the part of the first two respondents is totally unsustainable. This stand is totally unwarranted and devoid of any authority. Muchless, therefore, there could have been any insistence for the payment of economic rent. The situation faced by petitioner no.1 where the provisions of payment of economic rent or double the amount of standard rent would be applicable is created by the first two respondents themselves. That situation would not have arisen at all if the G.Rs. circulars etc. pertaining to allotment of quarter to relations of retiring Government servant who was occupying a Government quarter were acted upon in right earnest. That action is, therefore, required to be struck down.

19. Assuming for the time being that the first two respondents had some justification for bringing about the aforesaid situation where petitioner no.1 may have to pay

either double standard rent or economic rent, nonetheless, there was no justification whatsoever on their part to withhold last pay certificate as well as no due certificate, but for which, the pension papers cannot be finalised, death-cum-retirement gratuity cannot be released and all other retirement dues and benefits, cannot be made available to petitioner no.1. We have already seen that the said situation of making petitioner no.1 to pay, economic rent etc. is of the making of the first two respondents. This is clearly in violation of the circulars and G.Rs. meant for the purpose. G.R. dated 22nd October 1982 is referred to in the said affidavit in reply of Dr.Anand. On reading the same, it is, at once, clear that only if the retired employee continues to occupy a quarter, unauthorisedly, it would apply. Strictly speaking said 1965 G.R. pertaining to the relations of retiring Government Employee, in my opinion, could have also taken care of this situation. However, looking to the facts and circumstances of the case, as I am required to deal with the same and give a finding with regard to the effect of those provisions that question is not required to be gone into and hence, I do not deal with the same.

20. The net result therefore is that the petition succeeds. The demand of economic rent as also, double standard rent etc. is quashed and set aside. The first two respondents and all other concerned authorities are hereby directed to forthwith release firstly the last pay drawn by petitioner no.1 for the month of April 1983, the no due certificate, the last pay certificate, and all other required documents and certificates so that petitioner no.1's pension can be fixed, death-cum-retirement gratuity can be paid and all other retirement benefits can be made available to him. The matter ordinarily would have rested here.

21. The petitioner has also asked for interest for the delayed payment. In my opinion, this claim is eminently merited by petitioner no.1 because there is no fault on his part that these amounts are not paid to him. Therefore, interest will have to be paid on the salary for the month of April 1983, which as noted above, has been totally wrongfully withheld. All monetary benefits now being given to the petitioner no.1 including the salary for the month of April 1983, the retirement benefits, gratuity etc. shall therefore, bear interest at 15% per annum. So far as salary for the month of April 1983 is concerned interest at aforesaid rate shall be paid on and from 1st May 1983. Providing for the usual time for release of gratuity etc. the interest for

the remaining monetary benefits shall become due on and from 1st November 1983. Petition no.1 be entitled to interest as aforesaid till the date of payment. Looking to the fact that so much time has elapsed, I am of the opinion that a time limit is required to be fixed for making payments that are due to petitioner no.1. I am told that at present he is completely bed-ridden . In view of this, instead of the usual time of six months, it is curtailed to 4 months starting from 1st November 1996. With a view to avoid any further delay, office is directed to send the writ of this order forthwith to the concerned authorities. A copy of this order shall also be made available to the learned Advocate for the petitioner as well as to the learned A.G.P. for being communicated to the respective authorities to make doubly sure that they are informed of the order without any further delay and they are not left with any excuse whatsoever of not being communicated to them. Rule is made absolute accordingly.

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